

OPEN SPACE USE AGREEMENT

THIS AGREEMENT, made this 3rd day of May, 2002, between Lysy, Frank J., Trustee Revocable Trust hereinafter called the "Owner", and the County of Fauquier, a political subdivision of the Commonwealth of Virginia, hereinafter called the "County", recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the "Property"; and
2. The County is the local governing body having real estate tax jurisdiction over the Property; and
3. The County has determined:
 - A. That it is in the public interest that the Property should be provided or preserved for one or more of the following uses: park or recreational purposes; conservation of land; conservation of other natural resources; an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use which serves the public interest by the preservation of open-space land as provided in the land-use plan; and
 - B. That the Property meets the applicable criteria for real estate devoted to open space use as prescribed in Article 4 (Section 58.1-3229 *et seq.*) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Historic Resources; and

- C. That the provisions of this Agreement meet the requirements and standards prescribed under Section 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open space use to a non-qualifying use; and
- 4. The Owner is willing to make a written recorded commitment to preserve and protect the open space uses of the Property during the term of this Agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the County pursuant to Section 58.1-3234 of the Code of Virginia and Section 8-10 of the Fauquier County Code.
- 5. The County is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this Agreement, in consideration of the Owner's commitment to preserve and protect the open space uses of the Property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and Section 8-11 of the Fauquier County Code are complied with.

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, the parties hereby covenant and agree as follows:

- 1. This Agreement shall apply to all of the following described real estate: see Attachment "A".
- 2. The Owner agrees that during the term of this Agreement:
 - A. There shall be no change in the use or uses of the Property that exist as of the date of this Agreement to any use that would not qualify as an open space use.
 - B. There shall be no display of billboards, signs or other advertisements on the property, except to (i) state solely the name of the Owner and

the address of the Property; (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property; or (iv) provide warnings. No sign shall exceed four feet by four feet (4' x 4').

C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:

1. on the Property as of the date of this Agreement; or
2. related to and compatible with the open space uses of the property which this Agreement is intended to protect or provide for.

D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.

E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building structures and features under this Agreement

F. There shall be no construction or placement of fences, screens, hedges, walls, or other similar barriers which materially obstruct the public's view of scenic areas of the Property.

G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation, except that the Owner may:

1. engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia By-Way or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and

2. remove vegetation which constitutes a safety, a health, or an ecological hazard.
- H. On areas of the property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.
- I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area.
- J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities, or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.
- K. There shall be no separation or split-off lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of the Agreement only as the same entire parcel that is the subject of this Agreement; provided, however, that the Owner may grant to a public body or bodies open space, conservation or historic preservation easements which apply to all or part of the Property.
3. This Agreement shall be effective upon acceptance by the County, provided, however, that the real estate tax for the property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with the Fauquier County Code. Thereafter, this

Agreement shall remain in effect for a term of eight (8) consecutive years.

4. Nothing contained herein shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this Agreement.
5. The County shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this Agreement.
6. Nothing in this Agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this Agreement.
7. Nothing in the Agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.
8. If any provision of this Agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby.
9. The provisions of this Agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.
10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whatever the sense requires.
11. This Agreement may be terminated in the manner provided in Section 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

12. Upon termination of this Agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the County determines otherwise in accordance with applicable law.
13. Upon execution of this Agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Fauquier County, Virginia, at the Owner's expense.
14. **NOTICE: WHEN THE OPEN SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NON-QUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH SECTION 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.**

ATTACHMENT "A"

PARCEL ONE: ALL THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING 25.0 ACRES LOCATED IN FAUQUIER COUNTY, VIRGINIA AND MORE PARTICULARLY DESCRIBED AS LOT TEN (10), POSSOM HOLLOW FARM, AS THE SAME IS DULY PLATTED AND RECORDED IN DEED BOOK 387, AT PAGE 60, IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF FAUQUIER COUNTY, VIRGINIA. MORE PARTICULARLY SHOWN ON THAT CERTAIN PLAT RECORDED IN DEED BOOK 711, AT PAGE 147 IN THE AFORESAID CLERK'S OFFICE. AND BEING THE SAME PROPERTY CONVEYED TO THE PARTIES OF THE FIRST PART BY DEED DATED DECEMBER 19, 1996 IN DEED BOOK 769, AT PAGE 613 AND RECORDED AMONG THE FAUQUIER COUNTY, VIRGINIA LAND RECORDS.

AND

PARCEL TWO: ALL THAT CERTAIN TRACT OR PARCEL OF LAND LOCATED ON THE EAST SIDE OF U.S. HIGHWAY 17 AND DESCRIBED AS PARCEL 11 OF POSSOM HOLLOW FARM AND ADDITIONAL PARCEL ACQUIRED BY DEED RECORDED IN DEED BOOK 585, AT PAGE 814, IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF FAUQUIER COUNTY, VIRGINIA. SAID TRACT OF LAND CONTAINS 26.3 ACRES, MORE OR LESS, AS DESCRIBED ON THE PLAT OF SURVEY OF RICHARD U. GOODE, CLS, DATED MAY 5, 1987, AND ATTACHED TO DEED OF BOUNDARY LINE ADJUSTMENT RECORDED IN DEED BOOK 585, AT PAGE 814, IN THE AFORESAID CLERK'S OFFICE. AND BEING THE SAME PROPERTY CONVEYED TO THE PARTIES OF THE FIRST PART BY DEED DATED DECEMBER 19, 1996 IN DEED BOOK 769, AT PAGE 646 AND RECORDED AMONG THE FAUQUIER COUNTY, VIRGINIA LAND RECORDS.

AND BEING THE SAME PROPERTIES ACQUIRED BY THE OWNER HEREIN BY THAT CERTAIN DEED DATED DECEMBER 13, 2000 AND RECORDED IN DEED BOOK 883, AT PAGE 1731 AMONG THE LAND RECORDS OF FAUQUIER COUNTY, VIRGINIA.

WITNESS the following Signatures and Seals this ____ day of _____, 200__.

X Frank J. Lyons (SEAL)
OWNER

X Edith L. Lyons (SEAL)
OWNER

COUNTY OF FAUQUIER, a political
subdivision of the Commonwealth of Virginia

BY _____ (SEAL)
CHAIRMAN
Fauquier County Board of Supervisors

STATE OF VIRGINIA
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for
the State and County aforesaid, this ____ day of _____, 200__, by:
_____, Owner(s). and _____,
Chairman, Fauquier County Board of Supervisors

NOTARY PUBLIC

My Commission Expires:

STATE OF VIRGINIA,
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for
the State and County aforesaid, this 8th day of May, 2002, by:

Frank and Edith Lysy, Owner.

David D. Jenkins
NOTARY PUBLIC

My Commission Expires:

9-30-02

STATE OF VIRGINIA,
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for
the State and County aforesaid, this ___ day of ___, 200__, by:

_____, Owner.

NOTARY PUBLIC

My Commission Expires:

STATE OF VIRGINIA,
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for
the State and County aforesaid, this ___ day of ___, 200__, by:

_____, Chairman, Fauquier County Board of Supervisors

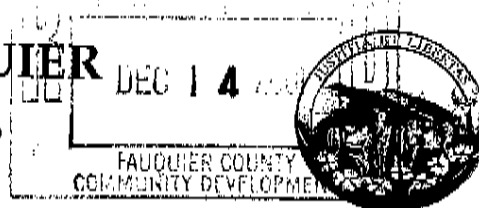
NOTARY PUBLIC

My Commission Expires:



COMMONWEALTH OF VIRGINIA
COUNTY OF FAUQUIER

POST OFFICE BOX 149
WARRENTON, VIRGINIA 20188-0149
FAX (540) 347-0512
commish@co.fauquier.va.us



ROSS W. D'URSO, CCR
COMMISSIONER OF THE REVENUE

TASKING MEMO

REAL ESTATE	(540) 347-8614
TAX RELIEF FOR THE ELDERLY	(540) 347-8783
LAND USE	(540) 347-8783
STATE INCOME TAX	(540) 347-8617
PERSONAL PROPERTY	(540) 347-8620
BUSINESS LICENSE	(540) 347-8788
MAIN	(540) 347-8622

Date: December 11, 2001

To: Frederick Carr, Director, Department of Community Development

From: Lisa G. Jenkins, GIS Tech I *LJG*

Subject: Written Commitments by Landowners to preserve Open-space Land Use

Task: Verify if property is consistent with the land use plan of the county and the standards for real estate devoted to Open-space use under the Virginia Land Use Assessment Law.

Property: PIN(S) 6042-37-9273-000 ACREAGE(S) 25.00
6042-38-6099-000 26.3

Assessed in Name(s) of: Lysy, Frank J., Trustee
Lysy, Frank J. Revocable Trust
Lysy, Edith L, Trustee
Lysy, Edith L. Revocable Trust
PO Box 199
Delaplane, VA 20144

Due Date: February 1, 2002

Attachments: 1) Copy of Application/Revalidation for Land Use
2) GIS map of parcel

Recommendation:

☒ This property is planned for rural agricultural uses and is consistent with the County's Land Use Plan.

☐ This property does not conform to the general and specific standards for the following reasons:

COMMENTS:

COMMUNITY DEVELOPMENT REVIEW OF 2002 OPEN SPACE LAND USE ASSESSMENT APPLICATIONS

Property Owner	LYSY, FRANK J., TRUSTEE
Parcel I.D. No. (PIN)	6042-38-6099
Location	RTE. 17, WINCHESTER RD.
Acreage	26.3
Magisterial District	MARSHALL

Property Description / Use:

Current Zoning:	RA	Comprehensive Plan Designated Land Use:	RURAL AGRICULTURAL
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Adjacent Property Zoning / Current Land Use

North	RA	RURAL RESIDENTIAL
South	RA	AGRIC
East	RE	CONSERVATION / WOODED
West	RA	AGRIC

The applicant has filed for land use assessment under the open space category. To qualify, real estate must be consistent with the land use plan, consist of a minimum of 25 acres, and satisfy one of the following specific criteria: park/recreation purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development or for the public interest. The applicant's parcel, as it pertains to these conditions, follows below.

General Standards

- Consistency with land use plan
- Minimum acreage
- Recorded commitment (e.g. agricultural and/or forestal district, open space easement, open space land use assessment)

Meets Criteria

<input checked="" type="radio"/> Y	N
<input checked="" type="radio"/> Y	N
Y	N

Specific Standards

- park/ recreation purposes
- conservation of land or other natural resources
- floodways
- historic or scenic purposes
- assisting in the shaping of the character, direction and timing of community development or for the public interest

Y	<input checked="" type="radio"/> N
<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N
<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N
<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N
Y	<input checked="" type="radio"/> N

Additional Comments:

Community Development Determination (Positive or Negative)

Site Visit Date: FEB 1, 2002

Report Date: FEB 1, 2002

COMMUNITY DEVELOPMENT REVIEW OF 2002 OPEN SPACE LAND USE ASSESSMENT APPLICATIONS

Property Owner	LYSY, FRANK J. TRUSTEE
Parcel I.D. No. (PIN)	6042-37-9273-000
Location	RTE. 17, WINCHESTER RD.
Acreage	25
Magisterial District	MARSHALL

Property Description / Use:

Current Zoning:	RA	Comprehensive Plan Designated Land Use:	RURAL AGRICULTURAL
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Adjacent Property Zoning / Current Land Use

North	RA	AGRIC
South	RA	AGRIC
East	RC	CONSERVATION / WOODED
West	RA	AGRIC

The applicant has filed for land use assessment under the open space category. To qualify, real estate must be consistent with the land use plan, consist of a minimum of 25 acres, and satisfy one of the following specific criteria: park/recreation purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development or for the public interest. The applicant's parcel, as it pertains to these conditions, follows below.

General Standards

- Consistency with land use plan
- Minimum acreage
- Recorded commitment (e.g. agricultural and/or forestal district, open space easement, open space land use assessment)

Meets Criteria

(Y)	N
(Y)	N
Y	N

Specific Standards

- park/ recreation purposes
- conservation of land or other natural resources
- floodways
- historic or scenic purposes
- assisting in the shaping of the character, direction and timing of community development or for the public interest

Y	(N)
(Y)	(N)
(Y)	(N)
(Y)	(N)
Y	(N)

Additional Comments:

Community Development Determination (Positive or Negative)

Site Visit Date:

FEB 1, 2002

Report Date:

FEB 1, 2002

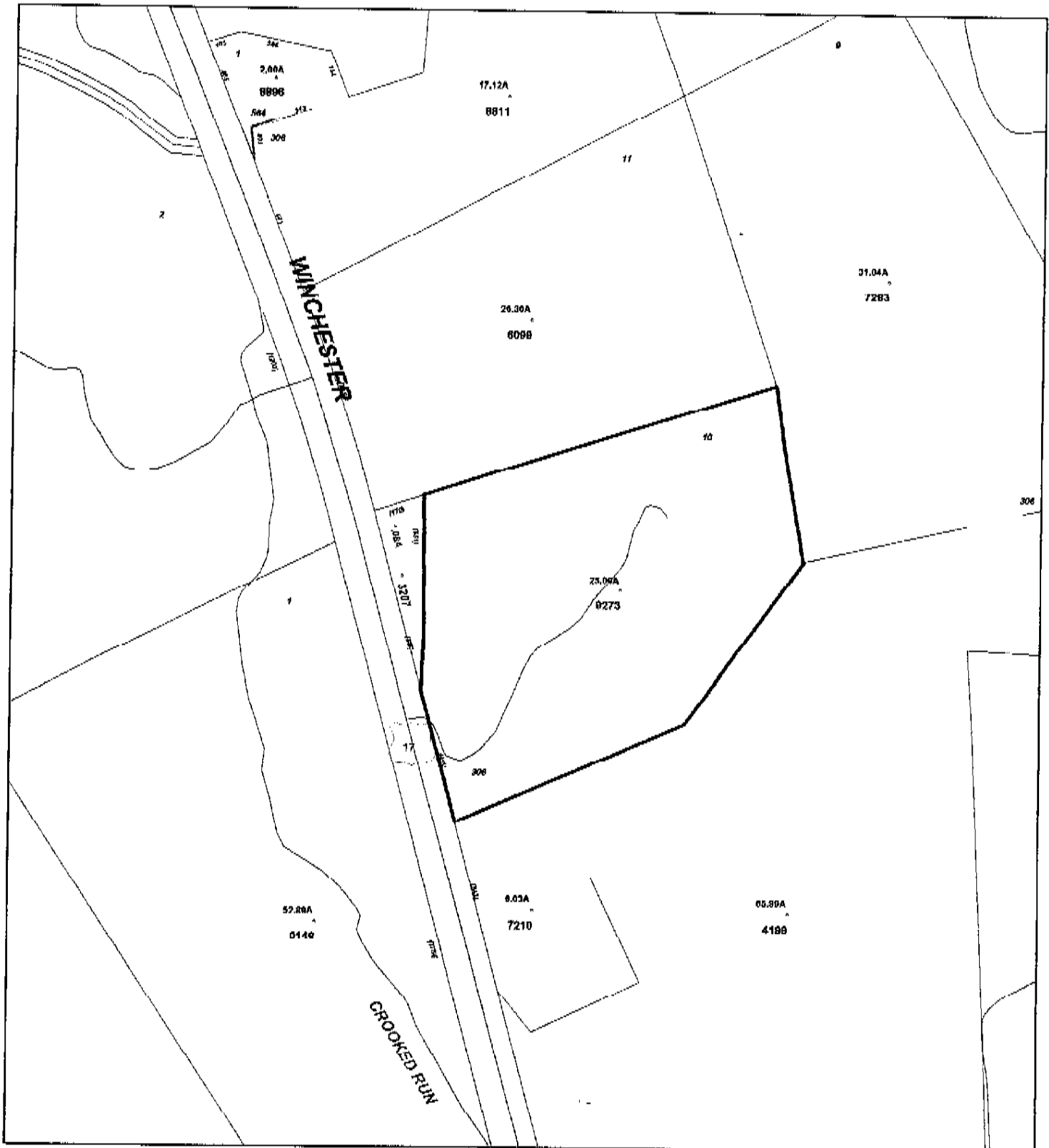


Fauquier County
Geographic Information System

PIN=6042-38-6099
 NAME=LYSY, FRANK J TRUSTEE
 ADDR=PO BOX 189
 CITY=ST-DELA PLANE, VA
 ZIP=20144
 FMV LAND=191500
 DEFER=0
 BLDG=0
 TAXVAL=191500
 ACREAGE=26.3000
 BKPG=683/1731
 SUBDIV=POSSUM HOLLOW FARM
 ES 111
 SVC DIST=

1 Inch = 417,3802 Feet.
 Date Printed : 12/12/01

This map does not meet
 surveying accuracy standards.



PIN=8042-37-8273
 NAME=LYGY, FRANK J TRUSTEE
 ADDR=PO BOX 199
 CITY=ST-DELA PLANE, VA
 ZIP=20144
 FMV LAND=195000
 DEFER=0
 BLDG=485400
 TAX VAL=880400
 ACREAGE=25.0000
 BKPG=883/1731
 SUBDIV=POSSUM HOLLOW FARM
 E911=2311 WINCHESTER RD
 SVCDIST=



Fauquier County
Geographic Information System

1 Inch = 439.0198 Feet.
 Date Printed : 12/12/01

This map does not meet surveying accuracy standards.

Lysy, Frank J., Trustee
6042-37-9273, 25 acres



Lysy, Frank J., Trustee
6042-38-6099, 26.3 acres



LU-1 Real Estate Appraisal
4001034 (Rev. 6/00)

APPLICATION FOR TAXATION ON THE BASIS OF A LAND USE ASSESSMENT

A single application prepared in triplicate shall be filed for each line on the land book. More than one classification may be included on the one application. APPLICATION WILL NOT BE ACCEPTED IF THERE ARE DELINQUENT TAXES ON THIS PARCEL.

FAUQUIER COUNTY, VIRGINIA

County, City or Town

District, Ward or Borough SCOTT MAGISTERIAL DIS-
TRICT

Owner(s) Name appearing on Land Book

Frank J. Lysy and Edith L. Lysy

Mailing Address:

Delaplane, VA. 20144, P.O. Box 199
(Winchester Rd. 2311)

Telephone Number: (540) 592-3255

OFFICE USE ONLY

Application No. 73 Yr. 2002

Type Application: New ☒ Split ☐

Fee: \$ 75.00 Taxes Verified ☒

Map No. 6042-37-9213-000

No. of Acres 25.0

Description Lot 10

Date application must be returned by: 11-1-01

Official processing application: _____

QUALIFYING USES

I. Agricultural Use: No. of Acres _____

Is this real estate devoted to the bona fide production for sale of plants and animals useful to man or devoted to and meeting the requirements and qualification for payments with an agency of the federal government? YES _____ NO _____

1. What field crops are being produced to qualify this parcel of real estate under the agricultural standards
Hay _____ Corn _____ Soybeans _____ Alfalfa _____ Other _____

2. How many of the following animals were on the real estate the previous years? How many months?
Cows _____ Horses _____ Sheep _____ Swine _____ Chickens _____ Turkeys _____ Other _____

II. Horticulture Use: No. of Acres _____

Is this real estate devoted to the bona fide production for sale of fruits of all kinds, vegetables; nursery and floral products or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government? YES _____ NO _____

III. Forest Use: No. of Acres _____

Is this real estate devoted to forest use, including the standing timber and trees thereon, devoted to the growth in such quantity and so spaced and maintained as to constitute a forest area? YES _____ NO _____

IV. Open Space Use: ☒ No. of Acres 25 + 1.08 Acres (Parcel 10, Bacon Hollow Farm)

LU-1 Real Estate Appraisal
4901034 (Rev. 6/88)

APPLICATION FOR TAXATION ON THE BASIS OF A LAND USE ASSESSMENT

A single application prepared in triplicate shall be filed for each line on the land book. More than one classification may be included on the one application. APPLICATION WILL NOT BE ACCEPTED IF THERE ARE DELINQUENT TAXES ON THIS PARCEL.

FAUQUIER COUNTY, VIRGINIA

County, City or Town

District, Ward or Borough SCOTT MAGISTERIAL DIS-

Owner(s) Name appearing on Land Book TRICT

Frank J. Lysy and Edith L. Lysy

Mailing Address:

P.O. Box 199, Delaplane, VA. 20144

Winchester Rd. 2311,

Delaplane, VA. 20144

Telephone Number: (540)-592-3255

OFFICE USE ONLY

Application No. 72 Yr. 2002

Type Application: New ☒ Split ☐

Fee: \$ 75.78 Taxes Verified ☐

Map No. 6042-38-6099-000

No. of Acres 26.3

Description lot 11

Date application must be returned by: 11-1-01

Official processing application: _____

QUALIFYING USES

I. Agricultural Use: _____ No. of Acres _____

Is this real estate devoted to the bona fide production for sale of plants and animals useful to man or devoted to and meeting the requirements and qualification for payments with an agency of the federal government? YES _____ NO _____

1. What field crops are being produced to qualify this parcel of real estate under the agricultural standards
Hay _____ Corn _____ Soybeans _____ Alfalfa _____ or _____

2. How many of the following animals were on the real estate in the _____ previous years? How many months?
Cows _____ Horses _____ Sheep _____ Pigs _____ Turkeys _____ Other _____

II. Horticulture Use: _____ No. of Acres _____

Is this real estate devoted to the bona fide production for sale of all kinds, vegetables; nursery and floral products or other payments or other compensation pursuant to a federal government? YES _____ NO _____

III. Forest Use: _____ No. of Acres _____

Is this real estate devoted to forest use, standing timber and trees thereon, devoted to the growth in such quantity and so spaced and maintained as to constitute a forest area? YES _____ NO _____

IV. Open Space Use: _____ No. of Acres 25± 1.30, Total: 26.30 AC., Parcel 11, Possum Hollow

give #5